

# Environmental Cooperative Agreement between Wisconsin Electric Power Company and Wisconsin Department of Natural Resources

This agreement is being entered into pursuant to s. 299.80 Wisconsin Statutes and represents the conditions negotiated and agreed upon by Wisconsin Department of Natural Resources (WDNR) and Wisconsin Electric Power Company ("Wisconsin Electric" or "the Company"), a subsidiary of Wisconsin Energy Corporation, for the purpose of providing an integrated, multi-emission air quality strategy for the Company's coal-burning power plants in Wisconsin.

FOR AND IN CONSIDERATION of the terms and conditions contained in this agreement, WDNR and the Company set forth the following:

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## I. FACILITY INFORMATION.

Wisconsin Electric, doing business as We Energies, produces, delivers, and sells electric energy in southeastern, east central, and northern portions of Wisconsin and the Upper Peninsula of Michigan. As of September 2002, Wisconsin Electric owns and operates five coal-burning power plants and three natural gas-burning power plants in Wisconsin. The power plants included in this agreement are as follows:

<b>Coal-Burning Power Plants</b>	<b>Address</b>
Milwaukee County Power Plant	9250 Watertown Plank Road Wauwatosa, WI 53226
Oak Creek Power Plant	4801 East Elm Road Oak Creek, WI 53154
Pleasant Prairie Power Plant	8000 95 <sup>th</sup> Street Pleasant Prairie, WI 53158
Port Washington Power Plant	146 South Wisconsin Street Port Washington, WI 53074
Valley Power Plant	1035 West Canal Street Milwaukee, WI 53233
<b>Natural Gas-Burning Power Plants</b>	<b>Address</b>
Concord Generating	N8914 County Highway E

Station	Watertown, WI 53094
Germantown Power Plant	N96 W19298 County Line Road Germantown, WI 53022
Paris Generating Station	335 North 172 <sup>nd</sup> Avenue Union Grove, WI 53182

Wisconsin Electric also operates a nuclear power plant, several hydroelectric power plants, and a wind turbine that are *not* included in this agreement. Any *new* power plant units that Wisconsin Electric might construct during the term of this agreement are also not covered by this agreement, except as detailed in Section X below for cases where a new unit replaces an existing coal-burning unit covered by the agreement. (New units would also have to meet all applicable federal and state statutory and regulatory emission limits and control requirements.)

Wisconsin Electric and other electric utilities that operate older coal-burning power plants must comply with a variety of environmental requirements, particularly those related to air quality. The air quality issues the Company faces continue to increase both in terms of number and complexity. For the next few decades, the electric utility industry and other sectors of the economy will likely face new regulatory, legislative, and/or judicial requirements related to, for example, ozone non-attainment, fine particles, regional haze/visibility, acid rain, mercury deposition, air toxics, new source review, and greenhouse gases. These requirements will result in continuing pressure to continually reduce air emissions.

Wisconsin Electric has been interested for some time now in developing multi-emission approaches to more comprehensively address the myriad of air quality issues the Company faces now and in the future. The Company recognizes that a multi-emission approach has the advantage of increasing planning certainty for a fixed timeframe and anticipating future emission targets. An integrated approach allows the Company to optimize emission controls for multiple reduction objectives (e.g., sulfur dioxide, nitrogen oxides, mercury), invest its money and resources in air quality improvement, and more efficiently manage and recover environmental costs.

## **Project Summary**

This Environmental Cooperative Agreement will allow Wisconsin Electric to implement an integrated air quality approach at its coal-burning power plants in Wisconsin. Wisconsin Electric will implement enforceable limitations on emissions of sulfur dioxide ("SO<sub>2</sub>"), nitrogen oxides ("NO<sub>x</sub>"), and mercury ("Hg"). The emission limits will be phased in over a ten-year period. The Company will meet certain interim limits for SO<sub>2</sub>, NO<sub>x</sub>, and Hg five years following approval of this agreement. These limits are more stringent than the current limitations for these coal-burning power plants. The agreement also describes certain non-binding goals that the Company has established for greenhouse gas reductions.

In exchange for agreeing to comply with more stringent limitations than currently required, Wisconsin Electric will receive flexibility with regard to permit streamlining, reduced reporting and decreased administrative expense, alternative monitoring and enhanced corrective action, and a multi-emission compliance alternative for the State's mercury rule at its fossil-fuel burning power plants.

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## II. DEFINITIONS.

The following definitions are applicable to this agreement:

- A. "Approval" means a permit, license or other approval issued by the department under chapters 280 to 295 Wis. Stats.
- B. "Cooperative agreement" means an agreement entered into under section 299.80(6), Wis. Stats.
- C. "Environmental management system" means an organized set of procedures implemented by the owner or operator of a facility to evaluate the environmental performance of the facility and to achieve measurable or noticeable improvements in that environmental performance through planning and changes in the facility's operations.
- D. "Environmental performance" means the effects, whether regulated under chapters 280 to 295 Wis. Stats. or unregulated, of a facility on air, water, land, natural resources and human health.
- E. "Facility" means all buildings, equipment and structures located on a single parcel or on adjacent parcels that are owned or operated by the same person.
- F. "Interested person" means a person who is or may be affected by the activities at a facility that is covered or proposed to be covered by a cooperative agreement or a representative of such a person.
- G. "Performance evaluation" means a systematic, documented and objective review, conducted by or on behalf of the owner or operator of a facility, of the environmental performance of the facility, including an evaluation of compliance with the cooperative agreement covering the facility, approvals that are not replaced by the cooperative agreement and the provisions of chapters 280 to 295 Wis. Stats. and rules promulgated under those chapters for which a variance is not granted under section 299.80(4) Wis. Stats.
- H. "Pollutant" means any of the following:
  - 1. Any dredged spoil, solid waste, incinerator residue, sewage, garbage, refuse, oil, sewage sludge, munitions, chemical wastes, biological materials, radioactive substance, heat, wrecked or discarded equipment, rock, sand, cellar dirt, or industrial, municipal, or agricultural waste discharged into water or onto land.
  - 2. Any dust, fumes, mist, liquid, smoke, other particulate matter, vapor, gas, odorous substances or any combination of those things emitted into the air, but not uncombined water vapor.
- I. "Violation" means a violation of a cooperative agreement, of an approval that is not replaced by the cooperative agreement or of a provision of chapters 280 to 295 Wis. Stats. and rules promulgated under those chapters for which a participant has not received a variance under section 299.80(4) Wis. Stats.

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## III. PERIOD OF AGREEMENT.

This agreement shall commence following its signing by both parties and continue for five years, during which period Wisconsin Electric and WDNR shall abide by all terms and conditions contained herein. At least fifteen (15) working days prior to the expiration of this agreement, WDNR shall notify the Joint Committee on Finance of the Wisconsin State Legislature that WDNR proposes to renew this agreement, unless WDNR determines that the agreement is no longer consistent with s. 299.80(2), Wis. Stats. or Wisconsin Electric objects to renewal. This agreement may then be renewed up to five years, pursuant to s. 299.80(6e), Wis. Stats.

The performance commitments contained herein shall continue to apply to Wisconsin Electric following the expiration of this agreement unless the agreement is revoked or terminated pursuant to Section IV below. Performance commitments that take effect ten years from the original date of this agreement are only applicable if the agreement is renewed for an additional five years after its original five-year term.

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**IV. AMENDMENT/REVOCATION.**

Pursuant to s. 299.80(7), Wis. Stats., WDNR may amend this agreement with the consent of the Company or for cause. After providing 30 days written notice to WDNR, the Company may terminate this agreement if: 1) the Public Service Commission of Wisconsin does not allow recovery in rates for the costs required to comply with this agreement; or, 2) the State of Wisconsin implements rules or laws that address mercury emissions from electric utilities and this agreement does not qualify as a multi-pollutant compliance alternative under those rules or laws. WDNR may revoke this agreement if the Company is in substantial noncompliance, refuses to amend this agreement, is unable or unwilling to meet commitments to superior environmental performance or has not addressed a substantive issue raised by a majority of the interested persons (s. 299.80(7), Wis. Stats). Furthermore, at any time during the period of the agreement, the Company may request to reopen the agreement for potential modifications to reflect changing business conditions, environmental performance goals, modification or inclusions of other provisions, or for other valid reasons as mutually agreed with WDNR. WDNR shall provide at least 30 days for public comment on the proposed amendment or revocation of a cooperative agreement and an opportunity for a hearing if comments demonstrate considerable public interest in the proposed action.

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**V. ENTIRE AGREEMENT.**

This agreement, together with any specifications, referenced parts, attachments and effective amendments, shall constitute the entire agreement. Communications or understandings made prior to the signing of this agreement and pertaining to its subject matter are hereby superseded. All revisions to this agreement must be made by a written amendment to this agreement, signed by both parties and issued under the same procedures as this agreement.

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**VI. APPROVALS COVERED.**

The following air pollution control permits previously granted by WDNR to Wisconsin Electric are covered under this agreement:

Power Plant	WDNR Air Pollution Control Permit Number
Concord	128065080-P01 and 97JCH154OP

Germantown	00RV027
Milwaukee County	241027050-J01
Oak Creek	241007690-P01 and 01RV103
Paris	230094810-P01
Pleasant Prairie	230006260-P02, 01AJH005, 02RV018
Port Washington	246004000-P01
Valley	241007800-P01

All of the conditions and requirements embodied in these permits remain in effect without modification unless specifically superseded by Section XI (Operational Flexibility and Variances) of this agreement.

In addition to the permits listed above, two other WDNR approvals shall also remain in effect. The first is the Environmental Cooperative Agreement for Pleasant Prairie Power Plant, signed by WDNR and Wisconsin Electric on February 5, 2001. Concurrent with the signing of this system-wide agreement, Section XI.C. (Permit Streamlining) of the Pleasant Prairie agreement will be reviewed and amended as necessary to ensure consistency between the two agreements. The second approval that remains in effect is Consent Order #AM-96-202, also pertaining to Pleasant Prairie Power Plant. That consent order is not affected or modified by this agreement.

Wisconsin Electric requests that WDNR grant approval for certain types of construction projects if and only if the project meets *all* of the conditions specified in Section XI of this agreement. Projects not eligible for approval under Section XI may be eligible for approval under normal WDNR procedures.

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## **VII. INTERESTED PERSONS GROUP.**

Wisconsin Electric and WDNR are committed to working with stakeholders to make this agreement a success. During the development of this agreement, stakeholder involvement focused primarily on select environmental organizations. Environmental Defense, The Delta Institute and Wisconsin's Environmental Decade were involved in initial discussions of a multi-emission, multi-state reduction approach with the United States Environmental Protection Agency (EPA), WDNR, and the Company, including at a meeting on August 17, 2000. Environmental Defense and The Delta Institute later ceased their participation when the agreement took on a Wisconsin-only scope. The Company subsequently met individually with Wisconsin's Environmental Decade numerous times. Sierra Club first met with Wisconsin's Environmental Decade and the Company to discuss this subject on July 8, 2002. Wisconsin Electric then held meetings on August 30, 2002, September 9, 2002, and September 16, 2002 with Wisconsin's Environmental Decade and Sierra Club to provide updates on the status of the proposal and to receive comments on the draft agreement. In addition, Wisconsin Electric held an update meeting with Public Service Commission of Wisconsin staff on July 15, 2002.

Some of the comments made by stakeholders have been integrated into this agreement, but this is *not* meant, in any way, to indicate or suggest endorsement or support for this agreement by Wisconsin's Environmental Decade, Sierra Club, or any other stakeholder.

In addition to the meetings with these stakeholders, Wisconsin Electric has communicated with members of the public in the areas near its coal-burning power plants regarding the benefits of a multi-emission approach. This outreach has occurred through different mechanisms, including written communication and open houses.

Wisconsin Electric intends to further expand the involvement of interested persons beyond the list of stakeholders mentioned above. The Company will engage with current stakeholders during the first six months after the signing of this agreement to better define a process for developing a broader, more proactive interested persons group. A process will be established for stakeholders interested in the system-wide aspects of the agreement, as well as stakeholders interested specifically in local issues affecting the areas near individual coal-burning power plants covered by this agreement.

Wisconsin Electric will continue to involve their interested persons group(s) throughout the implementation of this agreement and will seek consensus regarding performance issues. The Company shall meet with members of the interested persons group at least once every six months to discuss implementation of the Company's environmental management systems (EMS) and to receive comments from the group regarding progress. The company will periodically seek to measure the opinions of its employees and the public regarding participation in this program through questionnaires or other instruments.

Assistance available from Wisconsin Electric to stakeholders and other interested persons shall include but not be limited to the following:

Informational Meetings and Forums	<ul style="list-style-type: none"><li>• Informational meetings for external members of the public and other interested persons not otherwise part of the core stakeholders group</li></ul>
Tours and Open Houses	<ul style="list-style-type: none"><li>• Targeted tours for external members of the interested persons group</li></ul>
Mailings	<ul style="list-style-type: none"><li>• Summary information sheets outlining key information about the plants' operations, environmental performance, and key components of this agreement, including progress on specific commitments and activities within the agreement</li></ul>
Wisconsin Electric Internet Site	<ul style="list-style-type: none"><li>• Development of a specific page on Wisconsin Electric's internet site dedicated to this agreement</li></ul>

	<ul style="list-style-type: none"> <li>• Linkage of the Wisconsin Electric internet site with the WDNR Cooperative Agreement Internet site</li> </ul>
Presentations and Visits	<ul style="list-style-type: none"> <li>• Responding to invitations from external groups for presentations by Wisconsin Electric and plant staff on plant operations, environmental performance, and progress on the agreement</li> </ul>

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## **VIII. COMMITMENT TO ENVIRONMENTAL MANAGEMENT SYSTEM.**

Wisconsin Electric commits to develop and document an EMS meeting the requirements of ISO 14001 at each facility covered by this agreement. For Pleasant Prairie Power Plant, this commitment was met prior to signing of this agreement. Other facilities will meet this commitment according to the following schedule: 1) within 12 months following the signing of this agreement for Valley and Milwaukee County Power Plants; 2) within 18 months following the signing of this agreement for Oak Creek Power Plant; 3) within 24 months following the signing of this agreement for Germantown Power Plant and Concord and Paris Generating Stations; and, 4) within 12 months of commencing commercial operation for Wisconsin Electric's proposed repowered Port Washington Power Plant. The Company shall meet with members of the interested persons group at least once every six months to discuss implementation of the Company's environmental management systems.

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## **IX. COMMITMENT TO CONTINUING ENVIRONMENTAL IMPROVEMENT.**

### **Summary**

Wisconsin Electric's proposed project would result in emission reductions in SO<sub>2</sub>, NO<sub>x</sub>, and Hg from its coal-burning power plants in Wisconsin. The emission reductions proposed as part of this agreement are more stringent than requirements currently in place for Wisconsin Electric and will require the Company to reduce its emissions over the next ten years.

Wisconsin Electric proposes to achieve a system-wide rate-based SO<sub>2</sub> limit of 0.45 lbs/mmBTU within ten years of the date of this agreement, with an interim limit of 0.70 lbs/mmBTU of SO<sub>2</sub> to be achieved within five years of the date of this agreement. Wisconsin Electric's 2000 Wisconsin system weighted average rate for SO<sub>2</sub> was approximately 0.87 lbs/mmBTU.

Under this agreement, Wisconsin Electric also proposes to meet a system-wide rate-based NO<sub>x</sub> limit of 0.15 lbs/mmBTU within ten years of the date of this agreement. An interim NO<sub>x</sub> limitation of 0.25 lbs/mmBTU will be achieved within five years. Wisconsin Electric's 2000 Wisconsin system weighted average NO<sub>x</sub> rate was approximately 0.38 lbs/mmBTU.

In addition to the proposed limitations on SO<sub>2</sub> and NO<sub>x</sub>, Wisconsin Electric proposes Hg reduction requirements at its coal-burning power plants in Wisconsin. Wisconsin Electric proposes to reduce annual Hg emissions from its coal-burning power plants in Wisconsin from 1998-2000 levels (or a more representative past three-year baseline period, if agreed to by WDNR) by 10% within five years of this agreement and by 50% within ten years of this agreement. Wisconsin Electric will meet the reduction requirements by reducing Hg air emissions from its Wisconsin or Michigan coal-burning power plants.

Wisconsin Electric also proposes as part of this agreement to:

1. Work with WDNR to implement its early reduction registry system and to register reductions in greenhouse gases and other emissions;
2. Monitor and report greenhouse gas emissions;
3. Pursue opportunities to invest in projects with greenhouse gas reduction benefits;
4. Work to develop markets for creditable emission reductions;
5. Support development of a federal greenhouse gas registry;
6. Advocate for renewable energy, energy efficiency, and advanced technology incentives;
7. Support global climate change research, development, and demonstration; and
8. Explore membership in EPA's Climate Leaders Initiative.

Wisconsin Electric and WDNR believe that the goals on greenhouse gases and the environmental commitments on SO<sub>2</sub>, NO<sub>x</sub>, and Hg represent significant improvements to environmental performance that are beyond current regulatory requirements.

## **Innovation**

This proposal represents an innovation from the current regulatory framework because it includes an integrated air quality approach over a ten-year period. Unlike the current regulatory framework, this proposed project includes emission limitations across Wisconsin Electric's coal-burning power plants in Wisconsin for SO<sub>2</sub>, NO<sub>x</sub>, and Hg that will be phased in over a 10-year period. The proposal also contains a corporate goal related to greenhouse gases during the ten-year period.

By setting forth interim and final limitations to be achieved by the Company in five and ten years, this proposal encourages technological innovation by providing Wisconsin Electric with the time to investigate the best methods to achieve these proposed limitations. In contrast, under the current regulatory environment companies often have as little as three years from promulgation of a final rule to implement the emission control requirements of that rule. The current structure also typically addresses the emission of one substance at one time. This structure favors the installation of equipment to control emissions of one regulated substance without encouraging consideration of whether a different control strategy would have collateral benefits for the reduction of other emissions.

This proposal will encourage Wisconsin Electric to determine how best to comply with emission reduction requirements so that the greatest environmental benefit can be achieved considering the cost of control and the reduction achieved. Wisconsin Electric will be able to consider its emission reduction requirements for SO<sub>2</sub>, NO<sub>x</sub>, and Hg, and its emission reduction goal for greenhouse gases, and select the most appropriate emission control options to address all those emissions. The Company will also be able to investigate new emission control strategies that it would not otherwise investigate under the current regulatory environment. Wisconsin



Electric believes that this approach will result in greater environmental benefits at a lower cost than would be achieved under the current regulatory environment.

### **Cost Saving and Paperwork Reduction**

In addition to the environmental benefits discussed above, this project will result in additional permitting flexibility as well as cost savings to both Wisconsin Electric and WDNR. Under this proposal, Wisconsin Electric will have additional flexibility to operate and maintain its power plants under the provisions defined by this agreement. This flexibility will enable Wisconsin Electric to more efficiently operate and maintain its power plants in a safe, reliable and cost effective manner.

The relief defined by this proposal is outlined in Section XI. While the current regulations provide for some relief from permitting requirements for fossil-fuel burning power plants, the amount of relief that is available is often only determined following the equivalent of a full permit review of alternatives, often times resulting in little or no environmental benefit. This proposal provides more expeditious determinations and no additional adverse environmental impacts.

Wisconsin Electric believes that these cost savings may enable it to investigate methods of reducing emissions from its coal-burning power plants. This agreement will also result in more predictable expenditures on environmental control equipment and correspondingly more predictable rates for Wisconsin Electric's customers.

Further, the reduction in the amount of time and paperwork associated with routine permit changes and the certainty that this agreement provides with regard to allowed permitting activities will also provide cost savings to WDNR. This project will reduce the time and paperwork costs associated with the review by WDNR of certain permit applications for the Wisconsin Electric power plants included in this agreement. The WDNR currently faces tight budget constraints in the Air Management Program. Reducing staff time and paperwork costs associated with permitting activities for Wisconsin Electric while maintaining stringent emission limitations will allow WDNR to allocate its scarce resources to other sources that need permits.

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## **X. POLLUTION LIMITS.**

This agreement will establish system-wide (i.e., corporate) average emission limits that apply to the aggregated emissions of Wisconsin Electric's coal-burning power plants located in the State of Wisconsin (listed in Section I of this agreement). *These new emission limits are supplementary and do not alter or replace any of the existing emission limits at individual power plants.* Thus, this agreement will not affect the emission limits contained in any previous approvals granted by WDNR to Wisconsin Electric. Except as otherwise provided in this section, the Company can use emission reductions that are below regulatory or statutory limits, but not below the system-wide average emission limits established by this agreement, to comply with current and future requirements. The limits established by this agreement do not determine the Company's emission baseline with respect to current or future requirements. The terms of this agreement would apply to any determination of surplus NOx emission reduction credits under a Memorandum of Understanding with the Michigan Department of Environmental Quality relating to NOx emissions.

With the exception of those requirements identified in Section XI (Operational Flexibility and Variances), the Company commits to abide by all current applicable environmental requirements. Any provisions of permits or approvals covered by this agreement that are not specifically superseded in Section XI shall remain in effect. The Company also commits to abide by all future applicable environmental requirements.

As stated above, Wisconsin Electric proposes enforceable commitments that will be applicable to its Wisconsin coal-burning power plants accordingly:

### 1. Nitrogen Oxides

Wisconsin Electric will meet the following NO<sub>x</sub> limitations across its Wisconsin coal-burning power plants using averaging across the power plants:

- a. 0.25 lbs/mmBTU, based upon an annual average and seasonal average, within five years of the date of this agreement; and,
- b. 0.15 lbs/mmBTU, based upon an annual average and seasonal average, within ten years of the date of this agreement.

### 2. Sulfur Dioxide

Wisconsin Electric will meet the following SO<sub>2</sub> limitations across its Wisconsin coal-burning power plants using averaging across the power plants:

- a. 0.70 lbs/mmBTU, based upon an annual average, within five years of the date of this agreement; and,
- b. 0.45 lbs/mmBTU, based upon an annual average, within ten years of the date of this agreement.

### 3. Mercury

Wisconsin Electric will reduce Hg emissions from its Wisconsin coal-burning power plants from 1998-2000 levels (or a more representative past three-year baseline period, if agreed to by WDNR) by 10% within five years of the date of this agreement and by 50% within ten years of the date of this agreement. Wisconsin Electric will meet the reduction requirements by reducing Hg air emissions from its Wisconsin or Michigan coal-burning power plants. Wisconsin Electric will not generate emission reduction credits of Hg unless the reductions are beyond those required under this agreement and beyond the emission reduction requirements of any rule or law to regulate Hg emissions from electric utilities.

NOTE: Limits that take effect ten years from the original date of this agreement are only enforceable if the agreement is renewed for an additional five years after its original five year term.

Wisconsin Electric proposes to demonstrate compliance with the NO<sub>x</sub> commitments discussed above on an annual average and a seasonal average basis. Compliance with the SO<sub>2</sub> and Hg requirements will be demonstrated on an annual average basis.

In the event that Wisconsin Electric does not meet its mercury reduction requirement in a given year, the Company may over-control in a future year at a ratio of 1.10 to 1.00 per year to make up for the shortfall in the previous year. A shortfall in any year must be made up within three years. Borrowing may *not* occur from years when the performance commitments required by this agreement are not in effect.

One of the purposes of this agreement is to create incentives for Wisconsin Electric to replace coal-fired units with new units that produce lower emissions, or at the very least to remove disincentives for such replacement. In the event that a coal-fired unit at a power plant covered by this agreement is replaced with one or more new units at the same power plant, NO<sub>x</sub> and SO<sub>2</sub> emissions from the new unit or units may be used in the system averaging to meet performance requirements of this section, but only to the extent that the unit or units replace actual coal heat input on the same site. Actual coal heat input in this context means the average seasonal/annual heat input to the replaced coal-fired unit over the last two seasons/years prior to the retirement of the coal-fired unit. For example, if Wisconsin Electric replaces a coal unit with 2 gas-fired units and actual heat input to the gas units exceeds actual heat input to the coal unit that was replaced, Wisconsin Electric may only include emissions from the gas-fired units in its averaging to meet the limitations of this section up to the actual coal heat input of the original coal-fired unit that was replaced.

Wisconsin Electric also proposes as part of this agreement to:

1. Work with WDNR to implement its early reduction registry system and to register reductions in greenhouse gases and other emissions;
2. Monitor and report greenhouse gas emissions;
3. Pursue opportunities to invest in projects with greenhouse gas reduction benefits;
4. Work to develop markets for creditable emission reductions;
5. Support development of a federal greenhouse gas registry;
6. Advocate for renewable energy, energy efficiency, and advanced technology incentives;
7. Support global climate change research, development, and demonstration; and
8. Explore membership in EPA's Climate Leaders Initiative.

Activities related to greenhouse gases represent a non-binding corporate goal, not an enforceable commitment.

Wisconsin Electric shall maintain records to demonstrate compliance with the enforceable commitments made under this agreement and to provide WDNR with information in an annual report on its emissions and efforts to achieve its corporate goal for greenhouse gases.

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## **XI. OPERATIONAL FLEXIBILITY AND VARIANCES.**

In exchange for the environmental commitments discussed above, Wisconsin Electric requests certain flexibility at its Wisconsin fossil-fuel burning power plants. The proposed approach will result in improvements at Wisconsin Electric's fossil-fuel burning power plants that would not otherwise occur absent this project. Under the agreement, however, Wisconsin Electric will be both able and encouraged to implement projects that will be both environmentally and commercially beneficial. The proposed flexibility is outlined and described in the remainder of this section.

## **1. Permit Streamlining**

### **A. Construction Permit Exemption for Minor Physical or Operational Changes**

#### **1) General Construction Permit Exemption**

The Company may construct, reconstruct, replace, relocate, or modify a stationary source without obtaining a construction permit, if the Company determines that the individual project meets all of the following conditions:

- a. The change is not subject to the permitting requirements of chs. NR 405 or 408, Wis. Adm. Code or subject to sections 112(g) or 112(j) of the Clean Air Act;
- b. Maximum theoretical emissions from the project do not exceed any of the following thresholds:
  - i. 9.0 pounds per hour each for sulfur dioxide and carbon monoxide;
  - ii. 5.7 pounds per hour each for nitrogen oxides, particulate matter, or volatile organic compounds;
  - iii. 3.4 pounds per hour for PM<sub>10</sub>;
  - iv. 0.13 pounds per hour for lead; or,
  - v. The emission rates contained in any applicable table in ch. NR 445, Wis. Adm. Code, for any air contaminant and the respective stack height;
- c. The change will not cause or contribute to a violation of any standard, emission limit, or control requirements embodied in federal law, federal regulations, chs. NR 400-499, Wis. Stats., or any permit issued to the Company; and,
- d. The change does not trigger a requirement under section 111 or 112 of the Clean Air Act.

#### **2) Other Construction Permit Exemptions**

In addition to any General Construction Permit Exemptions, the Company is not required to obtain a construction permit for changes already exempted or excluded under ch. NR 406, Wis. Adm. Code.

#### **3) Documentation Requirements**

For each change made under the General Construction Permit Exemption provisions, the Company shall maintain documentation of all appropriate technology reviews and analyses, and design information. This information shall be made available to WDNR on request. Also, the Company shall summarize all such changes in its annual report to interested persons.

### **B. Processing of Permit Applications.**

For any project that is not subject to air permitting requirements under chs. NR 405 or NR 408, Wis. Adm. Code, and not subject to sections 112(g) or 112(j) of the Clean Air Act, the Company may request that WDNR process an application for an air pollution control construction permit in accordance with this section.

#### **1. The Company shall submit the following information to WDNR:**

- a. Two copies of a complete construction and operation permit application describing the proposed equipment, signed by the owner or the owner's authorized agent; and,

- b. Information describing how the interested persons group was notified of the proposed project.

2. The Company shall include all of the following in the application:

- a. An identification of all state rules and federal regulations applicable to the proposed process or process equipment;
- b. An analysis that demonstrates that the process or process equipment covered by the application will comply with the applicable requirements, including ambient air impact requirements;
- c. An analysis of the applicable control technology requirements, such as best available control technology and maximum achievable control technology. Process or control technologies that have been considered and rejected as part of the control technology assessment shall be identified;
- d. A draft permit;
- e. Certification by a responsible official of the completeness and accuracy of the application and its supplementary information; and,
- f. For draft permits that are subject to public notification, a draft public notice.

3. WDNR shall notify the Company, in writing, of its preliminary approval or denial of an application for a permit submitted under section XI.1.B.1. above within 30 days after receipt of an application meeting the criteria established in section XI.1.B.2. above. If the preliminary approval or denial of the permit application is subject to public notice requirements under state or federal law, WDNR will also at this time provide the Company with a final notice for publication announcing the opportunity for public comment. This 30-day period may be extended by WDNR with agreement by the Company in order to address issues with the Company that would otherwise make the permit unapprovable.

4. WDNR shall notify the Company, in writing, of approval or denial of an application for a permit processed in accordance with this section within 10 calendar days after the conclusion of the public hearing or comment period, whichever is later, except that the 10-day period may be extended by WDNR if substantial new issues are raised during the comment period or hearing.

#### **C. Testing or Research of New Technologies**

The Company may conduct testing or research of new technologies without obtaining a minor source construction exemption under NR 406.04(1)(i), Wis. Adm. Code, if all of the following conditions are met:

- 1. The Company (or its consultants) conducts a thorough engineering analysis and determines that the equipment to be used and the anticipated emissions from the testing or research will not present a significant hazard to public health, safety, or welfare or to the environment;
- 2. The Company provides written notification to WDNR at least 30 days prior to commencing research or testing that describes the proposed testing or research and includes an operating schedule and the types and quantities of emissions anticipated;
- 3. WDNR does not object in writing within 21 days of receiving notification;
- 4. Members of the interested persons group are informed and given at least seven days to comment; and,

5. The Company responds in writing to any significant comments received from a member of the interested persons group prior to commencing research or testing.

The Company shall remain responsible for the performance of any new technologies and for compliance with all applicable emission limits and control requirements, including those in the Title V permit. In addition, the Company shall maintain documentation of all appropriate technology reviews and analyses, design, construction, and operational information, making it available for examination by WDNR upon request. The Company shall describe the environmental and energy efficiency benefits of any technology tested or researched in its annual performance report to WDNR.

## **2. Reduced Reporting and Decreased Administrative Expense**

### **A. Quarterly Excess Emission Reporting**

The Company shall:

1. Notify WDNR by telephone within one business day of excess emissions, as defined in s. NR 439.09(10)(b), Wis. Adm. Code, followed by an electronic mail notification within five business days; and,
2. Submit to WDNR semi-annual excess emission reports for visible emissions, sulfur dioxide, and nitrogen oxides. These reports shall cover the time periods January 1 to June 30 and July 1 to December 31 of each year and shall be submitted within 45 days after the end of each reporting period. These reports may be submitted by electronic mail at the Company's discretion as soon as WDNR and EPA develop procedures for authenticating electronic signatures.

### **B. Title V Semi-Annual and Annual Reports**

The Company shall submit to WDNR:

1. A written semi-annual monitoring report covering the time period January 1 to June 30 of each year within 45 days after the end of each reporting period. This report may be submitted by electronic mail at the Company's discretion as soon as WDNR and EPA develop procedures for authenticating electronic signatures. This report shall be certified by a responsible official of the Company and shall describe any deviations from or violations of applicable requirements, including the dates of each event; and,
2. A written annual monitoring report that meets the requirements specified in current Title V permits. This report shall include the results of all monitoring, or a summary of all monitoring results, required by Title V permits.

## **3. Alternative Monitoring and Enhanced Corrective Action**

### **A. Instrument Calibration**

The Company shall calibrate all instruments used for measuring source or air pollution control equipment operational variables during major maintenance outages while following good engineering practices and historical experience, but no less frequently than once every twenty-four (24) months.

For natural gas-burning power plants, this provision includes the water injection and fuel flow metering system. These calibrations shall follow a schedule set up according to good engineering practices, historical experience, or the requirements of section 2.1.6 of Appendix D to 40CFR75. For coal-burning power plants, this provision includes the differential pressure instruments (transducers and alarm switches) for baghouses and spark rate, current, and voltage measurement systems for electrostatic precipitators.

The Company shall keep records documenting any calibration activities. Requirements for calibrating continuous emission monitors and continuous opacity monitors are not superseded by this agreement.

#### **B. Fugitive Dust Recordkeeping, Monitoring, and Reporting**

The Company shall conduct and keep records documenting daily operational inspections of the coal pile and other fugitive dust sources, ensuring that good operating practices and enhanced dust control techniques are practiced. The Company may propose to use these records as an alternative to the recordkeeping, monitoring, and/or reporting requirements of rules or guidance regulating coal dust emissions from electric utilities.

Valley Power Plant operates in the state-only, total suspended particulate non-attainment area in Milwaukee. At Valley Power Plant, if the silt content of the coal being used is higher than 5%, and particulate matter from the coal storage pile becomes airborne beyond the plant property (as determined by methods outlined within the facility's air pollution control operation permit), then the pile shall be treated with water, surfactant, stabilizers or chemicals; draped; or enclosed on a minimum of three (3) sides.

#### **C. Electrostatic Precipitator Monitoring and Data Collection**

For power plants with certified opacity monitoring systems which are connected to a data acquisition and handling system and presently can calculate a daily opacity average, the company may elect to use stack opacity as an indicator of abnormal boiler or electrostatic precipitator performance. If the Company makes this election, the power plant personnel may stop collecting electrostatic precipitator operating data and, instead, investigate, take corrective action, and document the causes and actions taken if:

1. The daily opacity average recorded is greater than 17 percent; or,
2. Any six-minute opacity reading is recorded greater than 20 percent.

#### **D. Coal and Ash Dust Collector Data Collection**

The Company shall:

1. Observe daily the material transfer processes' collector vents for visible emissions; and,
2. Keep records of any necessary corrective actions taken as a result of the observed visible emissions or control room alarms.

### **4. Mercury Rule Multi-Emission Compliance Alternative**

As a multi-emission reduction plan approved by the State of Wisconsin that addresses, at a minimum, NO<sub>x</sub>, SO<sub>2</sub>, and Hg, compliance with this agreement during the term of this agreement may qualify as a multi-pollutant alternative under a rule developed by WDNR to reduce Hg emissions from electric utilities. In the event that the

State of Wisconsin adopts a mercury reduction rule and this agreement does not qualify as a multi-pollutant compliance alternative, the Company may terminate this agreement.

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## **XII. REPORTING OF VIOLATIONS.**

Any violations discovered as part of the baseline performance evaluation or annual performance report required under Section XIII shall be disclosed to WDNR within 45 days of the completion of the evaluation or report. Any such notification shall contain the information required under s. 299.80(12), Wis. Stats. WDNR may not take any civil enforcement action on any such reported violations if they are corrected within 90 days of notification, unless the violations present an imminent threat to public health or the environment or may cause serious harm to public health or the environment, or the department discovers the violations before the Company discloses them. This does not exempt the Company from the requirements for immediate notification contained in s. 292.11, Wis. Stats. Any criminal violations would always be subject to WDNR enforcement action.

If a longer period of time is needed to correct the violations, a compliance schedule can be negotiated and the agreement modified allowing a compliance schedule of up to 12 months.

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## **XIII. BASELINE AND PERIODIC PERFORMANCE EVALUATIONS.**

Within 180 days of signing this agreement, the Company shall submit to WDNR and members of the interested persons group a baseline performance evaluation. The baseline performance evaluation shall meet or exceed the requirements described in Section II.G. of this agreement.

The Company shall also submit an annual performance report to WDNR and members of the interested persons group within 90 days after the first full year of the agreement and each year of the agreement thereafter. Each annual performance report shall satisfy the requirements outlined in Section II.G. of this agreement. In addition, each annual performance report shall include:

- Actual annual emissions of SO<sub>2</sub>, NO<sub>x</sub>, Hg, and CO<sub>2</sub> for each power plant covered under this agreement, and information concerning calculation of those emissions;
- Actual seasonal emissions for NO<sub>x</sub> for the period May to September, inclusive, for each power plant covered under this agreement, and information concerning calculation of those emissions;
- Information concerning the status of any research projects underway to study Hg emission reductions and the status of Wisconsin Electric's efforts to achieve Hg reductions;
- Information concerning the status of any research projects underway to study greenhouse gas emission reductions and the status of Wisconsin Electric's efforts to reduce its system-wide emission rate;
- Information concerning any emission reductions during the previous year registered with the early credit registry;
- A summary of process changes made at the plant under the General Construction Permit Exemption procedures in section XI.1.A.1. of this agreement; and,
- Information concerning any non-performance with this agreement for the previous year.



The annual performance report will identify any goals and objectives of the previous year. Wisconsin Electric's progress toward reaching those goals will be evaluated based on the metrics in this agreement. The annual performance report will include an evaluation of the EMS implemented under this agreement. The annual performance report also will identify areas of success and areas for improvements.

The annual performance report will also include an assessment of the success of the project in reducing the time and money spent by Wisconsin Electric and WDNR on paperwork and other administrative activities that do not directly benefit the environment. In order to assist Wisconsin Electric with this assessment, WDNR shall maintain a record of its own administrative savings and other cost savings associated with this agreement. WDNR shall provide this information to the Company on at least an annual basis.

Wisconsin Electric shall provide a draft of each annual performance report to WDNR and the interested persons group for review and comment prior to final publication. Wisconsin Electric shall also solicit suggestions from WDNR and the interested persons group on how to improve performance under the agreement. Wisconsin Electric will respond to any comments and suggestions in writing or through further discussions with groups or individuals.

Wisconsin Electric shall make copies of all baseline and periodic performance evaluations available for public inspection on the Internet or in other formats upon request.

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#### **XIV. APPLICABLE LAW.**

The laws of the State of Wisconsin shall govern this agreement. Except as provided herein, the Company shall at all times comply with all Federal, State, and Local laws, ordinances and regulations in effect during the period of this agreement.

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#### **XV. SEVERABILITY.**

This agreement shall be deemed severable, and the invalidity or unenforceability of any term contained herein shall not affect the validity or enforceability of this agreement or of any other term contained therein. To the extent that such invalidity or unenforceability has a material impact on the expectations of Wisconsin Electric or WDNR, the parties agree to make appropriate modifications to this agreement to take such impact into account.

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#### **XVI. ADDRESSES.**

WDNR and Wisconsin Electric shall each assign a Project Manager for the duration of this agreement. The Project Managers shall be familiar with the history and contents of the agreement, and it shall be their responsibility to oversee and coordinate the necessary actions as contained in the agreement. The Project Managers shall facilitate communications between the parties to this agreement and serve as the primary contacts for all related inquiries. The following individuals are initially assigned to serve as Project Managers.

Changes in the information listed below shall be forwarded to the other party when effective and shall become part of this agreement without a formal amendment.

John Shenot  
Wisconsin Department of Natural Resources  
Bureau of Cooperative Environmental Assistance  
Post Office Box 7921  
Madison, WI 53707-7921  
(608)267-0802  
John.Shenot@dnr.state.wi.us

Kris McKinney  
Wisconsin Electric Power Company  
Post Office Box 2046  
Milwaukee, WI 53203  
(414)221-2157  
kris.mckinney@we-energies.com

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IN WITNESS WHEREOF, the parties by their signatures shall cause this agreement to be executed on the date specified.

Signed for and on behalf of:



STATE OF WISCONSIN  
DEPARTMENT OF NATURAL RESOURCES

By: /s/ Darrell Bazzell Date: 9/30/02

Darrell Bazzell  
Secretary

Signed for and on behalf of:

We Energies

**we energies**



By: /s/ Richard A. Abdoo Date: 9/30/02

Richard A. Abdoo  
Chairman of the Board & Chief Executive Officer